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NO. 80-1530

IN THE SUPREME COURT OF THE UNITED STATES

OCTOTER TERM, 1980

BOISE BASEBALL CLUB, INC., an Idaho corporation,

PLAINTIFF-APPELLANT-PETITIONER,

v.

BOWIE K. KUHN, individually and as Commissioner of Baseball, LELAND McPHAIL, individually and as President of the American League of Professional Baseball Clubs, CHARLES FEENEY, individually and as President of the National League of Professional Baseball Clubs, et al., (see following title page for complete list of defendants-respondents),

DEFENDANTS-APPELLEES-RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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Attorney for Petitioner.

QUESTIONS PRESENTED FOR REVIEW

The immunity rule applied to major league baseball is outdated and should be overturned, and the Sherman Act applicable to the Major Leagues in their treatment of the Minor Leagues.

If the immunity rule should continue, then there is an implied duty upon the Majors not to overrun the Minors which the court should enforce.

Boise Baseball Club was denied a jury trial on a viable cause of action for tortious interference with contractual negotiations.

Major Leagues violated contractual duty in acquiring territory and Boise Baseball Club is entitled to a jury trial on said cause of action.

LIST OF PARTIES

Boise Baseball Club, Inc.

Bowie K. Kuhn, Commissioner, and all Major League clubs in the National League and American League as of 1976 (set forth in entirety on title page)

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NO._____

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DEFENDANTS-APPELLEES-RESPONDENTS.

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BOISE BASEBALL CLUB, INC., an Idaho corporation,

Plaintiff-Appellant-Petitioner,

v.

BOWIE K. KUHN, individually and as Commissioner of Baseball, et al.,

Defendants-Appellees-Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled cause on the 11th day of December, 1980.

OPINION BELOW

The Memorandum opinion of the Court of Appeals is being reported (App. A, p. A-1). The Opinion of the United States District Court of Idaho is not reported (App. B, p. A-6).

JURISDICTION

The Judgment of the Court of Appeals was entered on the 11th day of December, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) (App. C, p. A-11).

QUESTIONS PRESENTED

This case raises four questions:

1. The dire need for majcr league baseball operators to be held subject to the Sherman Antitrust law just as every other sport in America, giving to this petitioner equal protection under the law.

2. If the immunity is to continue, then there is an implied duty upon the Majors not to overrun the Minors.

3. Tortious interference with petitioner's contractual negotiations with Medicine Hat business men.

4. Failure to abide by Rule 1 A of the Professional Baseball Agreement, namely the illegal and unconscionable taking of minor league territory.

STATUTES INVOLVED

The statutory provisions are §1 and 2 of the Sherman Act, 15 U.S.C. (App. D, p. A-12).

STATEMENT OF THE CASE

The petitioner is the Boise Baseball Club, a minor league baseball club that operated in Boise, Idaho and went out of business in 1976 because of the over-reaching tactics of these respondents, the major league operators. The Boise Baseball Club operated as a minor league club in the Northwest League, which is part of the National Baseball Association, which is a

minor league organization. The Northwest League, because of the tactics of the major league operators, changed membership cities constantly and almost on an annual basis over the last many years, never giving the League stability.

The players on the roster of the Boise Baseball Club were owned by the Oakland Athletics, one of the respondents. The practices of the major league defendants in controlling all the raw material of the industry, namely the players, prevents the Boise Baseball Club and almost all minor league clubs from acquiring and owning talent and keeping it. The Boise Baseball Club was unable to control its roster because of these practices. It attempted to move the baseball club to Medicine Hat in Alberta, Canada, but because of the tactics of the Oakland Baseball Club they were prevented from doing so, which was a tortious interference with the

contractual negotiations that the Boise Baseball Club had with the business men of Medicine Hat.

The Majors at their will can usurp and acquire minor league territory, which the American League defendants accomplished by taking over the Seattle territory which at that time was in the Northwest League, and the petitioner Boise Baseball Club was shut out from these negotiations or prevented from participating,which is a violation of the Professional Baseball Agreement and professional baseball rules, which is an Agreement between the Majors and the Minors. Because of these tactics, the Boise Baseball Club was rendered insolvent and not allowed to continue to operate in any organized minor baseball league.

SUMMARY FOR REASONS FOR GRANTING WRIT

1. Because of the long judicial

history and the difficulty of the minor league operator to operate within the free enterprise system and within the protection of the Sherman Antitrust Act, the Boise Baseball Club has been deprived of its opportunity to survive economically, and more importantly it has been denied due process within our judicial system. The immunity granted major league baseball is absolutely arbitrary and illegal.

2. If such an unfair doctrine is allowed to continue, then the court should require an implied duty upon the Majors not to overrun the Minors.

3. Tortious interference with Boise Baseball Club's contractual negotiations with Medicine Hat businessmen.

4. Failure of respondents to abide by Rule 1 A in acquiring minor league territory and the monopolistic unfairness of the rule.

REASONS FOR GRANTING WRIT

1. The Baseball Rule is Wrong -- Tragically Wrong.

Arguing the logic of why the baseball rule is wrong would be like carrying coal to Newcastle. The Law Review articles are legion that the baseball immunity rule is unfair, arbitrary, is a special privilege and creates disrespect for the law.

The baseball special privilege rule has only looked at the major league side oi baseball. In 1949 there were 59 minor leagues -- today there are only 19. The Supreme Court has been the primary cause of many civic-minded minor league operators going bankrupt, or going out of business. Basically, owning a minor league franchise is a license to lose money. There have been many hearings before the Subcommittee on Antitrust and Monopoly, of the Committee of the Judiciary, United States Senate, and also subcommittees in

the House of Representatives since 1949. The hearings have been numerous. If one would look at the list of witnesses who have been called before these committees, it would be obvious that most of the witnesses are favorable witnesses for the major league side of the story. A few minor leaguers were called in the early committee hearings, but as the years go by, the voices of the minor leagues are more subdued and hardly is there a voice left.

Basic Reasons Why the Rule is Wrong.

1. Minor league operators are subject to the absolute control of their playing rosters by the major leagues.

2. Minor leagues are unstable and change membership almost annually.

3. Source of income for minor leagues is only at the gate, and acquiring and selling major league prospects to the major leagues is no longer a source of revenue.

4. The constant recall of players has destroyed the integrity of championship play in the league.

5. Prior baseball antitrust law dealt mostly with the reserve clause and not the entire business activities that have throttled the minor league operators. Minor league operators are basically civic-minded men who engage in the activity as an avocation, and their opportunities, because of the Baseball Rule, are extremely limited. Men of the caliber of Earl Manns, of the Atlanta Baseball Team of the Southern League, Jack Corbett, of El Paso, Arch Kingsley, of the Portland Baseball Club, Emil Sick, of the Seattle Rainiers, and Frank Lawrence, of the Portsmouth Club, are men of the past because this rule deprives men of that enthusiasm and character of the opportunity to engage in the national pastime.

6. The judicial reasoning that it is up to Congress to make the change is not intellectually honest. Congress, under the Sherman Act, gave the full thrust of their legislative power when they said "Every combination of restraint of trade is illegal."

7. The rule has to be changed if the law is to have the basic respect that it deserves. Stating that the Baseball Rule is an "anomaly", that baseball has "immunity", or that baseball has "established aberration" are all phrases that don't bring dignity to the law and should immediately be changed. The court has been of the erroneous opinion since Toolson that the protection of major league baseball is also the protection of minor league baseball. Nothing could be further from the truth.

LEGAL PRECEDENTS

In the Federal Baseball case, 259 U.S. 200, the Supreme Court held that

organized baseball was not subject to the federal antitrust legislation because baseball was not a commercial enterprise. Thirty years elapsed before the question again came before the court, in Toolson, 346 U.S. 356. At that time the court, on the basis of stare decisis, and without reexamining the underlying issues, reaffirmed Federal Baseball.

In 1955 the court was confronted with the Boxing case, 338 U.S. 246, and the court refused to follow the Baseball Rule and held that professional boxing matches were fully within the antitrust laws. It explained its Toolson decision on the basis of stare decisis and stated that the issue of whether or not an exemption from the antitrust laws should be granted in the first instance is "for the congress to resolve and not the Supreme Court of the United States."

In 1957, in Radovich, 352 U.S. 445, the football case, the court affirmed its ruling in the Boxing case. In Radovich, the court held that professional football was subject to the antitrust laws and then stated that if the ruling was unrealistic and illogical in view of its previous holdings, it was sufficient to answer, aside from the distinctions between the businesses, that "were we considering the question of baseball for the first time upon a clean slate, we would have no doubts." And then the court went on to say that congressional processes are more accommodative, affording the whole industry hearings and an opportunity to assist in the formulation of new legislation. The resulting product is, therefore, more likely to protect the industry and the public alike. That last statement was proved to be a very false prophecy. The whole structure of minor league baseball is controlled by the

major leagues.

The fact that the Baseball Rule is perpetuated only at congressional sufferance is not a very solid argument. Men like the Honorable Emanuel Cellars of the House of Representatives are no longer around to try to protect the minor leagues. The Majors have such a strangle hold on the remaining weak structure of minor league baseball that it would be difficult for any voice to make a noise loud enough to be heard within the monopolistic structure.

The United States Supreme Court should come to the full realization, late as it is, that the rule is unjust, it is arbitrary, it is illogical, it is intellectually dishonest and it is economically strangling to the minor leagues.

If due process means anything, the time is way overdue to give the minor league operator a day in court. One could

check the records and find that a minor league operator hasn't had a day in court, where major league activities are concerned, since 1922.

Wisconsin v. Milwaukee Braves, Inc., 31 Wisc. 2d 699, 144 N.W. 2d 1 (1966), Cert. denied 385 U.S. 990 (1966) is a case that places the minor leagues in "No man's land." The federal goverment has pre-empted the antitrust field so the state antitrust laws are ineffective, and the federal government is playing a ping pong match with the congress -- the result being that major league baseball maintains its special privilege status and the Minors are left out in the cold without any place to seek redress.

The Flood case glorified the major league status of yesteryear and ignored the plight of the Minors. Surely someone will see the grave injustice of the rule.

The Flood case stated that major league baseball has an "established aberration." This unreasonable result has to stop somewhere. Flood was fighting the reserve clause. This case involves and encompasses the entire operation of a minor league baseball club and the monopolistic offenses against it and the entire league.

Over the years, the lower District Courts have had serious doubts about the baseball rule. Judge Gus Solomon, in the District Court of Oregon, the Portland Baseball case, said the rule was a disgrace. Judge Fred Taylor, in the lower court in this case, could not understand why baseball has immunity and other sports did not. Judge Learned Hand, in Gardella v. Chandler, 172 F.2d 402 (2d Cir. 1949), along with Judge Frank, held that baseball was subject to the Sherman Antitrust laws.

2. If the Rule is to Continue Majors Have an Implied Duty Not to Overrun the Minors.

Boise Baseball Club is contending that if the court can create a special category for the major leagues and give them immunity from the Sherman Act, then it has the duty to see that those granted the special privilege do not overrun the Minors. Because of their monopolistic power, the Majors have become calloused to their contractual obligations and own practically all the players in the entire organized baseball. If the rule continues, the Minors have no redress whatsoever.

In Marjorie Webster Jr. Col. v. Middle States Ass'n. of C. & SS, 432 F.2d 650, 655 (1970), the court said that there is substantial expansion of judicial control of private associations if the association has substantial power to the detriment of its members.

3. Tortious Interference with Contractual Negotiations of Boise Baseball Club Is a Viable Cause of Action.

Boise Baseball Club stated a cause of action for tortious interference and was denied its day in court. This is a just cause. What is occurring since baseball has immunity from the Sherman Antitrust laws is that it is now becoming arrogant and feels it can overrun the Minors on basic common law rights. The court erred in denying plaintiff its day in court on this cause of action.

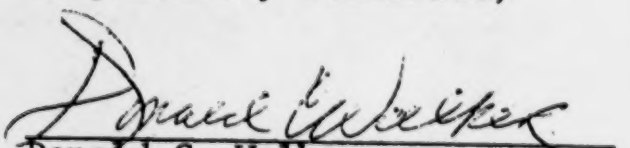
4. Boise Baseball Club Entitled to Breach of Contract Remedy for Violation of Rule 1 A of Organized Baseball Rules.

Here again, because of their monopolistic position and immunity, the Majors can circumvent contractual duties and have immunity. Boise Baseball Club is entitled to its day in court and a jury trial on its breach of contract action.

CONCLUSION

The United States Supreme Court is the greatest institution in the world that emphasizes the rule of law and justice. The Baseball rule cannot be justified, especially when applied to the monopolistic domination of a minor league baseball team and the entire league. The Petition should be granted.

Respectfully submitted,



Donald C. Walker
Attorney for Petitioner

APPENDIX A

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BOISE BASEBALL CLUB, INC., an Idaho Corporation,

Plaintiff-Appellant,

vs.

BOWIE K. KUHN, individually and as Commissioner of Baseball, LELAND MCPHAIL, individually and as President of the American League of Professional Baseball Clubs, CHARLES FEENEY, individually and as President of the National League of Professional Baseball Clubs, Atlanta Braves, Inc., Chicago National League Baseball Club, Inc., Cincinnati Reds, Inc., Houston Sports Association Inc., Los Angeles Dodgers, Inc., Metropolitan Baseball Club, Inc., Philadelphia National League Club, a Corporation, Pittsburgh Athletic Club, Inc., St. Louis National Baseball Club, Inc., San Francisco Baseball Club Inc., Golden West Baseball Co., (California Angels) Baltimore Baseball Club, Inc., John E. Fetzer Inc., (Detroit), Montreal Baseball Club Ltd., Oakland Athletic Division of Charles O. Finley, Inc., Texas Rangers, Ltd., Kansas City Royals Baseball Corp., Milwaukee Brewers Baseball Corporation, Inc., New York Yankees, a partnership, and Chicago White Sox Baseball Corp., Inc.,

Defendants-Appellees.

No. 78-3294
D.C. No. 77-1151

MEMORANDUM

Argued and Submitted — September 2, 1980

Decided — December 11, 1980

Appeal from the United States District Court
For the District of Idaho
Fred M. Taylor, District Judge, Presiding

Before: ALARCON and CANBY, Circuit Judges, and HOFFMAN, Senior District Judge*

Boise Baseball Club, Inc., appeals the decision of the district court granting summary judgment to appellees, the Commissioner of Baseball and 24 of the 26 major league teams. The action arises from the Oakland A's transfer of a player development contract from Boise to Medicine Hat, Alberta, as well as from the American League's expansion into Seattle. Boise argues that the district court erred by (1) ruling that major league baseball is immune from federal antitrust laws; (2) failing to create an implied duty on the major leagues not to subjugate the minor leagues; (3) failing to find that Oakland tortiously interfered with Boise's prospective sale of its player development contract to the Medicine Hat investors; (4) failing to find that appellees violated Rule 1A of the Professional Baseball Agreement in acquiring the Seattle territory of the northwest league without indemnifying Boise. Appellees have requested that the panel declare the appeal to be frivolous under Federal Rules of Appellate Procedure, Rule 38. We affirm, but do not find the appeal in its entirety to be frivolous.

I.

BASEBALL ANTITRUST EXEMPTION

The exclusion of baseball from the antitrust laws, anomalous as it may be, is thoroughly established. *Flood v. Kuhn*, 407 U.S. 258 (1972); *Toolson v. New York Yankees*, 346 U.S. 356 (1953); *Federal Baseball Club of Baltimore, Inc. v. National League*, 259 U.S. 200 (1922); *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101 (9th Cir. 1974); *Portland Baseball Club, Inc., v. Frick*, 282 F.2d 680 (9th Cir. 1960). The district court therefore properly dismissed appellants first cause of action.

II.

IMPLIED DUTY TO ALLOW THE MINOR LEAGUES TO FUNCTION INDEPENDENTLY OF THE MAJOR LEAGUES

Appellant contends that if major league baseball is not subject to antitrust sanctions, then the major leagues have an implied common law duty to allow the minor leagues to function independently. It

*The Honorable Walter E. Hoffman, Senior United States District Judge for the Eastern District of Virginia, sitting by designation.

asserts that each minor league team should be allowed to procure its own players, and to participate in decisions to shift players from one team to another. This argument was also properly rejected by the lower court. Application of state law liability to major league baseball was expressly rejected in *Flood, supra*. The Supreme Court stressed the need for uniform national regulation of baseball and indicated that state regulation would be an undue burden on interstate commerce.

III.

TORTIOUS INTERFERENCE WITH APPELLANTS PROSPECTIVE ADVANTAGE

Appellant claims that it laid the groundwork for transferring the team from Boise to Medicine Hat. At the last moment, Oakland unilaterally terminated the Boise player development contract and deprived the Boise investors of their one saleable asset. The investors were therefore deprived of an opportunity to recoup their losses.

The district court dismissed appellant's claim in reliance upon *Flood v. Kuhn, supra*. While *Flood* clearly invalidates state regulation aimed at the "business of baseball" itself, we do not interpret that decision as necessarily precluding individual actions of tort arising in a baseball context. Nevertheless, the dismissal of the tort claim was proper in the circumstances of this case.

In order to escape summary judgment, appellant had to show that Oakland was under a duty to continue the player development contract. No such duty appears on the face of the agreement or elsewhere in the record. Nor does appellant explain why Boise's right to recoup its losses by transferring the player development contract to Medicine Hat should prevail over Oakland's right to terminate and transfer. Oakland's decision to terminate the contract, rather than to allow Boise to sell its contract interest, is not actionable.

IV.

ARBITRATION

Appellant claims that appellees have failed in some unspecified manner to perform the conditions required under Rule 1A. This argument is totally without merit. All conditions under Rule 1A were complied with. The Seattle Rainiers challenged the arbitrator's award arising from the American League expansion into Seattle but the Second Circuit upheld both the procedures of Rule 1A and the

proceedings under it. *Seattle Rainiers Baseball Club, Inc., v. American League of Professional Baseball Clubs,* No. 77-7291 (10/17/1977). If Boise has any claim arising from the acquisition of the Seattle territory, which we do not mean to imply, it is against the Northwest League which ostensibly represented Boise in the arbitration proceedings. Boise has no claim against the Commissioner of Baseball and the major leagues.

Finally, Boise's attack upon the arbitration proceeding is time barred. A motion to vacate an arbitration award must be filed within three months, 9 U.S.C. § 12. Appellant's action commenced some ten months after the arbitration award and is therefore untimely.

V.

FRIVOLOUS APPEAL

Appellees have requested that the panel declare that this appeal is frivolous. Fed. R. App. Proc. 38. Appellees do not seek attorney fees or other damages, but hope that such a declaration will present future suits of this sort by appellants counsel. Appellants' counsel has twice before brought actions alleging the same basic monopolistic practices and both times the district court rejected his arguments and this court affirmed. *Portland Baseball Club Inc., v. Kuhn, supra; Portland Baseball Club, Inc., v. Frick, supra.* We agree that these contentions are frivolous. Appellant has raised distinct contract and tort claims here, however, which were not present in the two *Portland* cases. Although they failed, we cannot characterize the latter claims, or therefore the appeal as a whole, as frivolous.

The decision of the district court is affirmed.

RECORDER-SUNSET PRESS, SAN FRANCISCO, CA 12-26-80—550

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BOISE BASEBALL CLUB, INC., an Idaho Corporation, Plaintiff-Appellant, vs. BOWIE K. KUHN, individually and as Commissioner of Baseball, et al., Defendants-Appellees.	JUDGMENT No. 78-3294 DC CV 77-1151

APPEAL from the United States District Court for the District of IDAHO (Boise)

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of IDAHO (Boise) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered December 11, 1980.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

BOISE BASEBALL CLUB, INC., an Idaho corporation, Plaintiff, vs. BOWIE K. KUHN, et al., Defendants.	)	Civ. No. 77-11 MEMORANDUM OF DECISION and ORDER

Plaintiff filed this action on September 15, 1977, naming as defendants the Commissioner of Baseball, Bowie Kuhn; the Presidents of the National and American Leagues of Professional Baseball Clubs, Charles Feeney and Leland McPhail, respectively, and the 24 Major League Clubs which made up the Major Leagues of Professional Baseball in 1976. Plaintiff's complaint alleged four causes of action which can be summarized as follows:

(1) The first cause of action is described as an "Anti-Trust Action". This cause alleged that through combination and conspiracy the defendants restrained and monopolized interstate trade and commerce in the business of professional baseball games; (2) The second cause of action is described as one for a "Violation of Implied Duty". This cause alleges that if an anti-trust action is not viable because professional baseball is exempt from the anti-trust laws, then defendants owe plaintiffs an "implied duty and trust" to treat plaintiffs equitably and without overreaching; (3) The third cause is described as one for "Tortious Interference". It contends that baseball's "monopolistic system" permitted the defendant Oakland Baseball Club to "tortiously interfere" with contractual negotiations plaintiff was conducting with other parties;

(4) The fourth cause of action is described as one resulting from a "violation of Rule 1-A". This cause alleges that certain of the defendants failed to perform certain conditions required by Professional Baseball Rule 1 (a).

This matter is now before the court on defendants' motion to dismiss the complaint. After fully considering the oral arguments and briefs of counsel, and carefully examining the record, it is the opinion of the court that defendants' motions must be granted.

Plaintiff's first cause of action, which alleges a violation of the federal anti-trust laws, must be dismissed. It has been consistently held by the United States Supreme Court and the Ninth Circuit Court of Appeals that the business of baseball is not subject to the anti-trust laws. Flood v. Kuhn, 407 U.S. 258 (1972); Toolson v. New York Yankees, 346 U.S. 356

(1953); Federal Baseball v. National League 259 U.S. 200 (1922); Portland Baseball Club v. Kuhn, 491 F. 2d 1101 (9th Cir. 1974); and Portland Baseball Club, Inc. v. Frick (Baltimore Baseball Club, Inc.), 282 F.2d 680 (9th Cir. 1960). Although plaintiff makes an impassioned and quite well-reasoned argument as to why the above cases should not be followed, this court is duty bound to do so.

Plaintiff's second, third and fourth causes of action also fail to state a cause of action. The second and third causes of action are an example of alternative pleading. Plaintiff contends that if defendants are not subject to the antitrust law sanctions, then a common law action lies, i.e. a tort action and/or a contract or quasi-contract action. The contentions in the second and third causes of action, like those in the first, are not novel and

have been dealt with by the United States Supreme Court. In Flood v. Kuhn, supra, the court specifically rejected this argument. Flood v. Kuhn, 408 U.S. 258, 284.

A lengthy discussion of plaintiff's fourth cause of action is unnecessary. Suffice it to say, this contention has been before the courts prior to this action and found to be without merit. Portland Baseball Club, Inc. v. Kuhn, 368 F.Supp 1004 (D.C. Ore. 1972), aff'd 491 F.2d 1101 (9th Cir. 1974).

Accordingly, it is ORDERED that the motions of defendants to dismiss plaintiff's complaint be, and the same hereby are, GRANTED.

Dated this 1st day of September, 1978.

s/ Fred M. Taylor
FRED M. TAYLOR
United States District Judge

APPENDIX C

STATUTORY PROVISIONS

"28 U.S.C. § 1254. Courts of appeals; certiorari; appeal; certified questions

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

"(1) By writ of certiorari granted upon the petitio n of any party to any civil or criminal case, before or after rendition of judgment or decree;.... ."

APPENDIX D

SHERMAN ACT

July 2, 1890, Chap. 647, § 1, 26 Stat. 209; 15 U.S.C. § 1.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * *

July 2, 1890, Chap. 647, § 2, 26 Stat. 209; 15 U.S.C. § 2.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.